measure its rights and responsibilities by the rights and responsibilities of its individual members.[10]

The result of the failure of the courts to adopt a logical conclusion which, it is submitted, will not result in the "incalculable damage" so often intimated in the decisions, has been the adoption of the test of "justifiable cause" in determining the legality of a strike, and what constitutes interference with the right to labor. It is needless to say that hopeless conflict is the result of the question as to what constitutes "justifiable cause."[11]

It must be remembered that, in this discussion, it is presumed that no violence, threats of violence or any other unlawful means have been used by the employees in bringing about a strike. If such has been the case, the act of the individual employee was not the outgrowth of an absolute right, and an entirely different situation is presented. In *Kemp* v. *E. Ry. Employees*,[12] the defendants peacably informed their employers that if the plaintiffs were not discharged they, the defendants, would cease work; they had no grievance against their employers and the sole reason for their action was the fact that Kemp refused to join their union. The court found that the motive of the defendants was not injury to the plaintiff, but benefit to themselves through preservation of their union, and held that whatever damage resulted from the discharge of the plaintiff was *damnum absque injuria*. It is submitted that the court might better have founded their decision upon the right of the combination to do that which the individual members had an *absolute* right to do, than upon the ultimate benefit to the organization. For the benefit to members of the combination is so remote as compared to the direct and immediate injury inflicted upon the non-union workmen, that the law ought not to look beyond the immediate loss and damage to the innocent parties to the remote benefits that might result to the union.

H. W. W.

TORTS—LIABILITY TO BUSINESS GUESTS—A recent decision[1] of the court of King's Bench, in England, affords an interesting example of the difficult legal problems which arise out of the complexities of modern civilized life. The first question presented is as to the status of an individual who is allowed to enter a mercantile establishment under conditions which are contrary to its rules, but who is allowed to violate the customary regulations in order that his patronage may be secured. Is such an individual a trespasser, a licensee, a business guest under special conditions or is

[10] Eddy on Combinations, Vol. 1 § 475; Berry v. Donovan, 188 Mass. 353 (1905); Erdman v. Mitchell, 207 Pa. 79 (1903); Lucke v. Clothing Cutters, 77 Md. 396 (1893); Curran v. Galen, 152 N. Y. 33 (1897). But see Cook on Trade and Labor Combinations, § 8.

[11] 62 L. R. A. 715, note.

[12] 99 N. E. Rep. 389 (Ill. 1912).

[1] Clinton v. Lyons & Co., III K. B. 98 (1912); also 81 L. J. R. 923 (K. B.).

his status similar in all respects to that of ordinary customers? The decision in the case under discussion declared that the plaintiff, who in ignorance of a rule to the contrary, entered the defendant's tea-shop with her dog and was allowed to remain there, was not really "invited" to come in with her dog, but was only "permitted" to do so; and accordingly held that her status was merely that of a licensee.

It is believed that this finding is incorrect; and that a prospective customer who enters an establishment under conditions which violate its rules is either a trespasser or a simple business guest according to whether or not the management acquiesce in this violation of their conditions. It would seem that no individual who enters a place of business for purposes of trade can really properly be regarded as a licensee, since such a status includes only those who come on the premises solely for purposes of their own,[2] while the unquestioned definition of a business guest is that laid down by Willes, J., in the famous case of *Indermaur* v. *Dames*,[3] namely, that it is an individual who "resorts to the premises in the course of business upon invitation[4] express or implied." To return to the principal case, it seems entirely clear that the plaintiff's position is certainly not that of a trespasser, since her entry in violation of the rules of the premises was condoned by the management; it is equally clear that, being on the premises on business and not merely for purposes of her own, she was not a mere licensee, but that she was in fact "resorting to the premises in the cause of business upon the implied invitation" of the defendant company, and was accordingly a business guest, within the definition of Willes, J., who was merely allowed to violate the usual rules of the establishment. Now it appears scarcely logical to say that such an individual was a business guest admitted under special conditions. No conditions were really imposed upon her entrance, but what occurred was that the usual stipulations were removed; and it seems a contradiction to maintain that a guest for whom restrictions have been removed is consequently a guest upon special conditions. In other words, no conditions have been "imposed," but the usual ones have been merely "removed." It is accordingly submitted that acquiescence on the part of the management of an establishment in the violation of their usual rules is simply equivalent to an absolute waiver thereof in the particular instance and should in no way change the

[2] "A license is inferred where the object is the mere pleasure or benefit of the person using the premises, while an invitation is inferred where there is a common interest or mutual advantage to be derived from the visit." Burdick, Torts, p. 456; Campbell, Neg., sec. 33; Bennett v. Ry. Co., 102 U. S. 577 (1880).

[3] L. R. 1 C. P. 274 (1866). The definition given by Willes, J., in this case "has since been regarded on both sides of the Atlantic as the leading authority." Pollock, Torts (5th Ed.), p. 509.

[4] That an individual who enters a mercantile establishment on business does so on an implied invitation is a proposition of law too well settled to be open to question today.

status of the customer in whose favor and for the sake of whose patronage such an exception is made.

The principal case further presents the difficult problem as to the extent of the scope of the status of a business guest. In other words, the question raised is as to how far the legal status of a business guest extends as a protection to such property as the guest may bring upon the premises. It would seem from the statement[5] of Bray, J., that this legal status extends to cover such incidents of personalty as are invited into the business establishment. In denying recovery for injuries to the plaintiff's dog, he says, "Then did the defendants invite the dog into their shop? There is no finding to that effect and it cannot be sufficient if they merely permitted it to come in. In my opinion . . . both claims fail." Now it is entirely clear that whether or not a given article is "invited" to be brought into an establishment or is merely "permitted" to be carried in by the owner must of necessity depend upon the character of the property in question and the nature of the establishment. For instance there can be no doubt that a business guest is always invited to bring into a store or shop such ordinary incidents of personal property as a hat or a watch, or an umbrella or a cane, and consequently such property falls within the protection accorded to the owner by law. It is equally clear that an individual who goes shopping with a large dog or who enters an ordinary business establishment carrying explosives is, even though there is no rule against bringing them in, nevertheless merely permitted to do so. Objectionable property of such a nature is clearly not invited in by the business agencies and consequently such property is not guarded by the status of the owner.

It is believed that this question just discussed has not before been directly presented and it is a matter of considerable difficulty to formulate the correct rule of law which should govern the matter. It is, however, tentatively submitted that the legal status of a business guest should be regarded as including within its protective scope such ordinary incidents of personalty as the average individual would ordinarily take into the kind of establishment in question while shopping, and that the jury should be left to determine whether or not the property in question was of this character.

P. C. M., Jr.

TRUSTS—IS THE PROPAGATION OF CHRISTIAN SCIENCE A CHARITY?—Just how far a court will go to uphold a trust established for charitable purposes is most forcibly illustrated in a recent Massachusetts decision,[1] where a bequest in the will of the late Mrs. Eddy was attacked by her heirs-at-law. The controversy centered around the interpretation of a local statute[2] which prohibited gifts for the benefit of any one church where the amount

[5] On p. 932, L. J. R. (K. B.).

[1] Chase v. Dickey, 13 N. E. Rep. 410 (Mass., 1912).

[2] R. L. c. 37, § 9.